

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADAEuro Motor Sport Inc., et al,  
Plaintiffs

v.

ARB Las Vegas,  
Defendant

Case No. 2:21-cv-00177-CDS-BNW

**Order Granting Plaintiffs' Motion to  
Voluntarily Dismiss Claims  
and Closing Case**

Plaintiffs Euro Motor Sport, Inc. and Sammie Benson bring this action seeking declaratory relief from defendant ARB Las Vegas. The plaintiffs assert that ARB sold their Lamborghini after towing it from the Aria Resort & Casino. On March 28, 2023, United States Magistrate Judge Brenda N. Weksler instructed ARB to retain counsel, as corporations are not permitted to represent themselves. Order, ECF No. 61. ARB was warned that failure to comply with the order could result in a default being entered against it. *Id.* Although ARB was warned thrice that failure to retain counsel could result in the entry of a default judgment, ARB did not retain counsel. ECF Nos. 61–63. As a result, on June 29, 2023, the clerk filed an entry of default. ECF No. 65.

In lieu of moving for default judgment, the plaintiffs brought a joint motion for dismissal of the action under local rule 7-1(c)(stating “[a] stipulation that has been signed by fewer than all the parties or their attorneys will be treated—and must be filed—as a joint motion.”). *See generally*, ECF No. 68. However, Rule 7-1(c) is not the proper vehicle to dispose of the claims against ARB. ECF No. 69. The plaintiffs next submitted a stipulation of dismissal without prejudice executed by ARB’s previous counsel—who had been terminated from this action on March 28, 2023. ECF No. 70. The court would not approve the stipulation without the signature of a legal representative of ARB. ECF No. 71. I held a hearing on August 17, 2023, to consider

1 plaintiff's request for dismissal, permitting oral motion for voluntary dismissal pursuant to Rule  
 2 41(a)(2). ECF No. 72. Based on the plaintiffs' representation at that hearing, and finding that  
 3 ARB will not suffer legal prejudice from the settlement or dismissal, I granted plaintiffs' motion  
 4 for dismissal under Rule 41(a)(2).

#### 5 I. Discussion

6 Rule 41(a)(2) provides that "[e]xcept as provided in Rule 41(a)(1), an action may be  
 7 dismissed at the plaintiff's request only by court order, on terms that the court considers  
 8 proper." Fed. R. Civ. P. 41(a)(2). When considering a motion under Rule 41(a)(2), courts "must  
 9 make three separate determinations: (1) whether to allow dismissal; (2) whether the dismissal  
 10 should be with or without prejudice; and (3) what terms and conditions, if any, should be  
 11 imposed." *Sherman v. Yahoo! Inc.*, 2015 WL 473270, at \*2 (S.D. Cal. Feb. 5, 2015).

##### 12 a. Whether to allow dismissal.

13 A motion for voluntary dismissal under Rule 41(a)(2) should be granted unless a  
 14 defendant can show that it will suffer some legal prejudice as a result of the dismissal. *Smith v.*  
 15 *Lenches*, 263 F.3d 972, 975 (9th Cir. 2001); *Stevedoring Servs. of Am. v. Armilla I'l B.V.*, 889 F.2d 919, 921  
 16 (9th Cir. 1989) (stating that the purpose of Rule 41(a)(2) is "to permit a plaintiff to dismiss an  
 17 action without prejudice so long as the defendant will not be prejudiced...or unfairly affected by  
 18 dismissal."). The Ninth Circuit has held that "legal prejudice" means "prejudice to some legal  
 19 interest, some legal claim, some legal argument." *Westlands Water Dist. v. United States*, 100 F.3d 94,  
 20 97 (9th Cir. 1996).

21 No one appeared at the hearing on the dismissal on August 17, 2023, so ARB did not and  
 22 was unable to argue that dismissal would be prejudicial. Ultimately, based on plaintiffs'  
 23 counsel's representations, I found that dismissal is unlikely to prejudice the defendant as the  
 24 parties have negotiated an agreement to resolve this action; thus, it would be beneficial to allow  
 25 ARB an opportunity to satisfy the terms of that agreement as opposed to entering default  
 26 judgment against it.

1        *b. Whether the dismissal should be with or without prejudice.*

2        While a dismissal without prejudice is the default position stated in Rule 41(a)(2), the  
3 court has broad discretion on whether to dismiss an action with or without prejudice. *Hargis v.*  
4 *Foster*, 312 F.3d 404, 412 (9th Cir. 2002). Here, the plaintiffs move to dismiss the action without  
5 prejudice in the event that ARB fails to fully comply with the terms of their agreement. Based on  
6 ARB's conduct in the action thus far, I am satisfied that dismissal without prejudice is  
7 warranted.

8        *c. Terms and conditions.*

9        Finally, I turn to whether any terms and conditions should be imposed. Plaintiffs assert  
10 that no additional terms and conditions are necessary so long as ARB complies with the terms of  
11 the settlement negotiations. The parties have agreed that each party pay their own costs and  
12 attorneys' fees.


13 **II. Conclusion**

14        Based on the arguments of counsel as set forth on the record, IT IS HEREBY ORDERED  
15 that the plaintiffs' motion for voluntary dismissal of their claims without prejudice is  
16 GRANTED, with each party to pay their own costs and attorneys' fees.

17        IT IS FURTHER ORDERED that the stipulation of dismissal without prejudice [ECF  
18 No. 70] is DENIED as moot.

19        The Clerk of Court is instructed to enter judgement accordingly and close this case.

20        DATED: August 22, 2023

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22   
23 Cristina D. Silva  
24 United States District Judge  
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